

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**ORIGINAL**

In the Matter of )  
Amendment of Section 73.202(b) )  
Table of Allotments, )  
FM Broadcast Stations. )  
Key Colony Beach, Key Largo and )  
Marathon, Florida )

MM Docket No. 93-136

RM-8161

**RECEIVED**

**MAR 7 - 1994**

To: Chief, Allocations Branch

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**SUPPLEMENTAL JOINT COMMENTS**

Okeechobee Broadcasters, Inc., ("OBI"), licensee of WOKC-FM, Indiantown, FL, Sunshine Broadcasting, Inc. ("Sunshine"), licensee of WSUV, Fort Myers Villas, FL, and Jupiter Broadcasting Corporation ("JBC"), permittee of WADY, Jupiter, FL, (collectively "Commenters") by counsel and pursuant to Section 1.415(d) of the Commission's Rules, hereby submit these Supplemental Comments in MM Docket 93-136, RM-8161.

In its Reply Comments, Spanish Broadcasting System of Florida, Inc. (SBSF), licensee of WZMQ (FM), Key Largo, made a number of statements which were factually incorrect. Additionally, one of SBSF's arguments was based on information which is no longer accurate. Commenters believe it is in the public interest to incorporate this new information into the proceeding.

**I. The Sanibel Site Issue**

SBSF, in its Reply Comments concludes that "the proposed Ft. Myers Villas Channel cannot be allocated due to site area unsuitability and unavailability". This incorrect conclusion is premised on the erroneous contentions that 1) "the entire

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permissible site area identified by Commenters is on Sanibel Island" and (2) that the entirety of Sanibel Island is unavailable for the construction of radio towers."

Figure 2 of Attachment 1 to SBSF's Reply Comments (Engineering Statement of Herman Hurst), is a map which clearly depicts the permissible site area for the allocation of Channel 275C2 at Fort Myers Villas. For convenience that map is attached hereto as Exhibit 1. Contrary to the written allegations of both SBSF and Mr. Hurst, the diagram clearly shows that the permissible site area is not limited to only Sanibel Island, but also includes a peninsula of the mainland. This peninsula, known as Punta Rassa, contains a community to which Channel 249A has already been allocated by the Commission. The allocation point for the Punta Rassa station is  $26^{\circ}-29'-06"$ ,  $82^{\circ}-00'-36"$ . Attached hereto as Commenters' Exhibit 2 is a channel study which shows that Channel 275C2 can be allocated to Fort Myers Villas using the exact same reference point that was used by the Commission to allocate the Punta Rassa channel.

Therefore, SBSF's contention that the only permissible sites for Commenters proposed allocation are on Sanibel Island is proven false by its own map and by the attached channel study which shows that the Punta Rassa allocation point used by the Commission also works perfectly well as an allocation point for the proposed Fort Myers Villas station.

The second of SBSF's contentions that there are no tower sites on Sanibel Island--is irrelevant since a fully-spaced allocation

point at Punta Rasa has already been shown to exist.<sup>1</sup>

## **II. Loss of Service**

SBSF argues that Commenters' counterproposal would "create a new underserved area of 4,016 people who will, for the first time, receive fewer than five aural services." Once again, using SBSF's own exhibits, this statement is demonstrably false. Figure 4 of Attachment 1 to SBSF's Reply Comments is a map purporting to show an "Underserved Loss Area" resulting from Commenters' proposed allotments. For convenience that map is attached hereto as Exhibit 4. A close examination of that map reveals that such loss area identified by SBSF lies completely over Lake Okeechobee. Such area

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<sup>1</sup> However, it should be noted that on two previous occasions, the Commission has allocated stations using reference points on Sanibel Island (Channel 253A at Sanibel and Channel 257C2 at Fort Myers Beach). SBSF's contentions regarding the Sanibel licensee's claimed inability to find a suitable tower site on the island, and subsequent request for reallocation of its frequency to another community are not conclusive. Because the Sanibel permittee has had an economic incentive to change its city of license to a location closer to the Fort Myers metropolitan area, its claimed inability to locate suitable sites on both Sanibel and nearby Pine Island are inherently suspect, especially when other radio stations have found suitable locations on Pine Island. Sunshine's president has provided an affidavit, attached as Exhibit 3, which states that: (1) he personally knows of two radio stations presently working on plans to build towers on Pine Island, (2) the Sanibel permittee has improperly rejected sites on Pine Island by overstating the applicable guidelines regarding construction in close proximity to eagle nesting sites, and (3) he has located property which (a) would provide city coverage for the Sanibel permittee, (b) is for sale and, (c) is located well over the required distance from any officially known eagle's nest. Furthermore, the mere institution of a rulemaking regarding the Sanibel allotment, especially where objections have been filed, is not determinative of its outcome. Similarly, because the Commission has a policy of presuming site availability, SBSF's letter regarding present zoning classifications is not conclusive that waivers or variances are unavailable or that such classifications would not be changed upon appropriate application. See Heritage Broadcasting Company of North Carolina, 1 FCC Rcd 1012 (1986).

therefore obviously contains zero people, not 4,016 as claimed by SBSF.

Figure 5 of Attachment 1 to SBSF's Reply Comments is also a map purporting to show an additional "Underserved Loss Area". However, the "WOKC CP 1.0 mV/m CONTOUR" shown on that map is no longer correct. On December 8, 1993, the Commission granted a new construction permit to WOKC. (See attached Exhibit 5). Exhibit 6, attached hereto, shows the 1.0 mV/m contour for WOKC's new CP plotted on SBSF's map, and clearly illustrates that the entire area encompassed by the WOKC 1.0 mV/m contour (based on the new WOKC-CP as a C2) is also encompassed by the WOKC 1.0 mV/m contour (based on WOKC-Proposed as a C1). Therefore, upgrading WOKC from a C2 to a C1 and moving it to a new site will not create any loss of service at all--only gains.

It should also be noted that the "Underserved Loss Area" in SBSF's Figure 4 and Figure 5 do not portray areas that receive "fewer than five aural services," but are rather areas that receives fewer than five FM services. For example, the area (in Lake Okeechobee) which SBSF claims as an "Underserved Loss Area" is also completely served by WAFC-AM in Clewiston - a fact which SBSF conveniently overlooks. Therefore, not only does no one live in SBSF's alleged "Underserved Loss Area", the area is, in fact, not underserved.

### **Conclusion**

In its Reply Comments, SBSF has made a number of statements which are factually incorrect. As shown above, SBSF's contention that there is no site at which Channel 275C2 can be allocated to Fort Myers Villas is simply not true. Further, the areas which

SBSF has claimed as "Underserved Loss Areas" have been shown to be neither loss areas, nor underserved. For the foregoing reasons, as well as those originally advanced in Commenters' "Joint Comments and Counterproposal," Commenters respectfully request that the Commission Grant their counterproposal, which will provide new service to 1,339,657 people by upgrading three existing stations, and reject the proposal of SBSF, which at best might reduce some nonspecific and unverified occurrences of intermodulation interference in some car radios - other solutions for which have already been suggested by WWDO Vero Beach.

Respectfully submitted,

OKEECHOBEE BROADCASTING, INC.  
SUNSHINE BROADCASTING, INC.  
~~JUPITER BROADCASTING CORPORATION~~

By: 

Robert J. Rini

By: 

Evan D. Carb

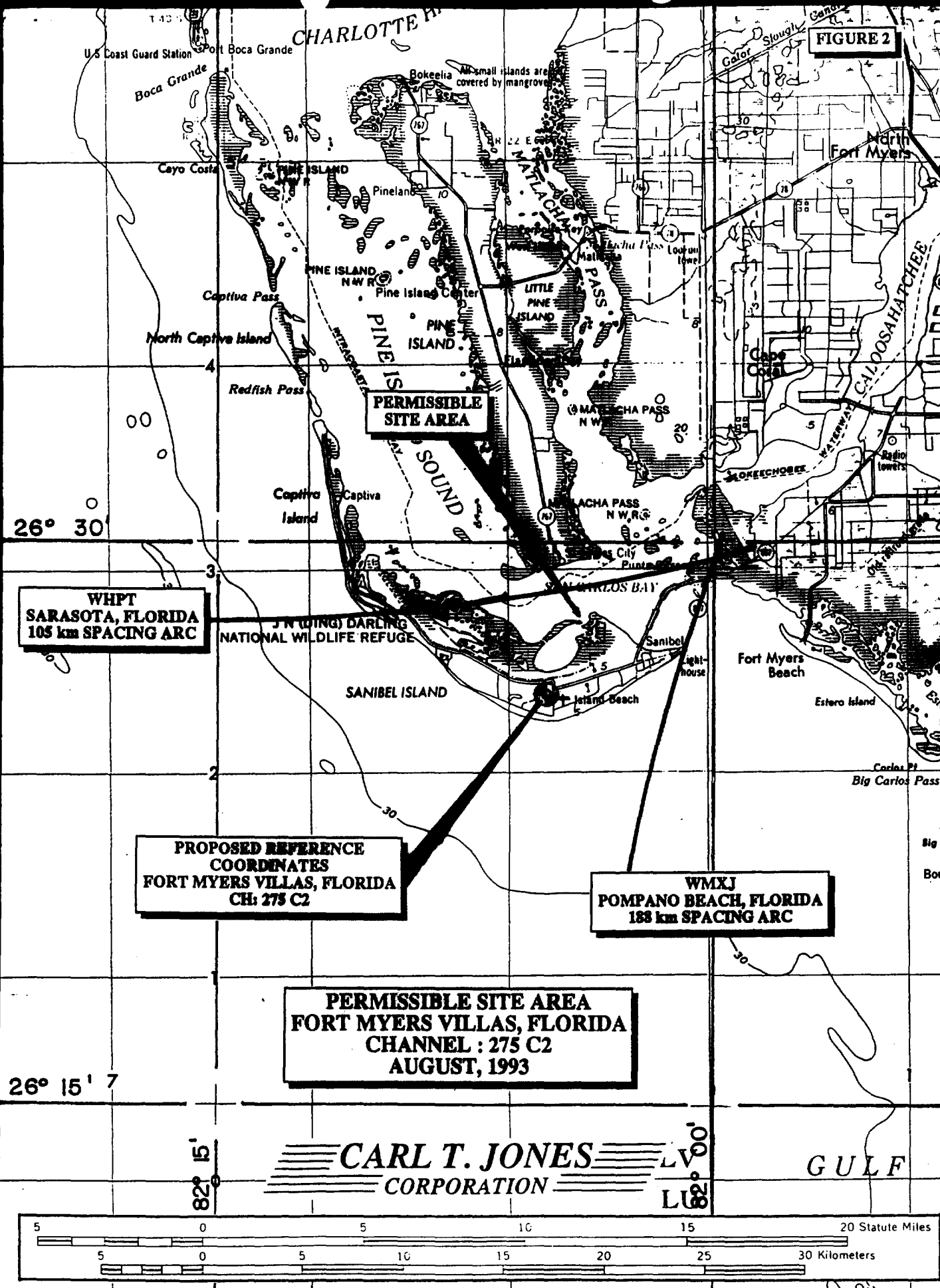
Rini & Coran, P.C.  
1350 Connecticut Avenue, N.W.  
Suite 900  
Washington, D.C. 20036  
(202) 296-2007

Their Attorneys

Date: March 7, 1994

**Supplemental Joint Comments**  
**Exhibit 1**

FIGURE 2



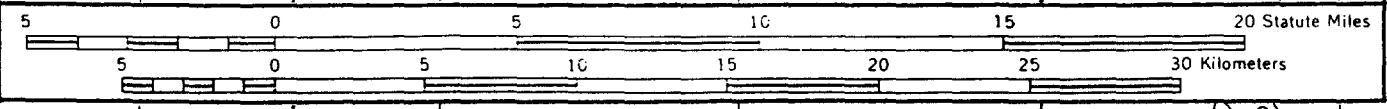
WHPT  
SARASOTA, FLORIDA  
105 km SPACING ARC

PROPOSED REFERENCE  
COORDINATES  
FORT MYERS VILLAS, FLORIDA  
CH: 275 C2

WMXJ  
POMPAÑO BEACH, FLORIDA  
188 km SPACING ARC

PERMISSIBLE SITE AREA  
FORT MYERS VILLAS, FLORIDA  
CHANNEL : 275 C2  
AUGUST, 1993

CARL T. JONES  
CORPORATION



**Supplemental Joint Comments**  
**Exhibit 2**



AFFIDAVIT

State of Florida       )  
                              )  
County of Highlands   )     SS:

James M. Johnson, having been duly sworn, deposes and says that:

1. He is a Broadcasters Consultant practicing in the City of Sebring, Florida, and his qualifications are a matter of record with the Federal Communications Commission.

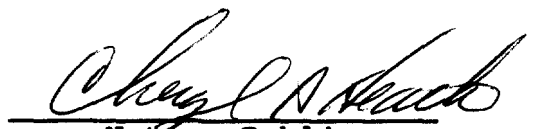
2. He has been retained by Okeechobee Broadcasters, Inc., Sunshine Broadcasting, Inc. and Jupiter Broadcasting Corporation to prepare the attached Engineering Exhibit.

3. He has prepared, or caused to be prepared under his immediate supervision, the accompanying exhibits which are attached to and form part of this affidavit.

4. The foregoing statements and the aforementioned exhibits are true to the best of his knowledge and belief.

  
James M. Johnson

Subscribed and sworn to this 2<sup>nd</sup> day of March, 1994.

  
Notary Public  
CHERYL A. HEATH  
9/11/95

JAMES M. JOHNSON & ASSOCIATES  
3750 US 27 NORTH SEBRING FL 33870

FT. MYERS VILLAS AT PUNTA RASSA REFERENCE SITE

REFERENCE  
26 29 06 N  
82 00 36 W

CLASS C2  
Current rules spacings  
CHANNEL 275 -102.9 MHz

DISPLAY DATES  
DATA 11-24-93  
SEARCH 02-08-94

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN	
AD275	275C2	Fort Myers Villas	FL	231.9	9.29	190.0	-180.71	*
DE276	276C3	Naples	FL	144.1	49.13	117.0	-67.87	*
WSGL.C	276C3	Naples	FL	144.1	49.13	117.0	-67.87	*
WSGI.	276A	Naples	FL	144.1	49.09	106.0	-56.91	*
WHPT	273C	Sarasota	FL	346.9	105.04	105.0	0.04	<
WMXJ	274C	Pompano Beach	FL	107.7	188.90	188.0	0.90	<
WOKCFM	276A	Okeechobee	FL	55.3	142.44	106.0	36.44	
AD276	276C1	Indiantown	FL	75.0	194.91	158.0	36.91	
ALOPEN	278C	Bradenton	FL	346.7	152.26	105.0	47.26	
AD278	278C	Bradenton	FL	346.7	152.26	105.0	47.26	

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FT. MYERS VILLAS AT PUNTA RASSA REFERENCE SITE

REFERENCE  
26 29 06 N  
82 00 36 W

CLASS C2  
Current rules spacings  
CHANNEL 275 -102.9 MHz

DISPLAY DATES  
DATA 11-24-93  
SEARCH 02-08-94

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-MI	R-KM R-MI	MARGIN (KM)
AD275 AD	275C2 26 26 00	Fort Myers Villas 82 05 00	FL 0.000 kW	231.9 OM	9.29 5.8	190.0 118.1	-180.71 *
Sunshine Broadcasting, Inc. RM8310 930726							
>PRM-Site Restricted 26.0 km Southwest-Counterproposal							
DE276 DE	276C3 26 07 33	Naples 81 43 17	FL 0.000 kW	144.1 OM	49.13 30.5	117.0 72.7	-67.87 *
Okeechobee Broadcasting, Inc. RM8310 930726							
WSGL.C CP ZCN	276C3 26 07 33	Naples 81 43 17	FL 14.000 kW	144.1 134M	49.13 30.5	117.0 72.7	-67.87 *
Sterling Communications Corp. BPH920527IG							
>From Channel 276A Per D89-434							
WSGL LI CN	276A 26 07 34	Naples 81 43 18	FL 2.000 kW	144.1 117M	49.09 30.5	106.0 65.9	-56.91 *
Sterling Communications Corp. BLH850620KS							
>*To Channel 276C3 Per D89-434							
WHPT LI CN	273C 27 24 30	Sarasota 82 15 00	FL 100.000 kW	346.9 503M	105.04 65.3	105.0 65.3	0.04 <
Paxson Broadcasting of Tampa, BLH890126KE							
WMXJ LI DEN	274C 25 57 59	Pompano Beach 80 12 33	FL 100.000 kW	107.7 307M	188.90 117.4	188.0 116.8	0.90 <
The New Intracoastal Broadcas BLH860313KC							
WOKCFM LI CN	276A 27 12 59	Okeechobee 80 49 53	FL 3.000 kW	55.3 88M	142.44 88.5	106.0 65.9	36.44
Okeechobee Broadcasters, Inc. BLH871223KA							
>*To Indiantown, FL Per D92-203-From Channel 276C2 Per D89-144							
AD276 AD	276C1 26 56 22	Indiantown 80 07 04	FL 0.000 kW	75.0 OM	194.91 121.1	158.0 98.2	36.91
Okeechobee Broadcasting, Inc. RM8310 930726							
ALOPEN AL N	278C 27 49 20	Bradenton 82 21 50	FL 0.000 kW	346.7 OM	152.26 94.6	105.0 65.3	47.26
92-59							
>Site Restricted-Effective 5-28-93-Reserved for WDUV per D92-59							

JAMES M. JOHNSON & ASSOCIATES  
3750 US 27 NORTH SEBRING FL 33870

## CLASS C2

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-M1	R-KM R-M1	MARGIN (KM)
AD278	278C	Bradenton	FL	346.7	152.26	105.0	47.26
AD	27 49 20	82 21 50	0.000 kW	0M	94.6	65.3	
		ECI License Company, L.P.			RM7923		930514

**Supplemental Joint Comments**  
**Exhibit 3**

## **EXHIBIT**

### **STATEMENT**

I, Jerry Bellairs, do make the following statement under penalty of perjury:

1. My name is Jerry Bellairs.
2. I am President of Sunshine Broadcasting, Inc.
3. I know of two different radio station operations which are presently working on plans to construct communication towers on southern Pine Island in an area which is would provide city grade coverage of Sanibel and which would not be short-spaced for the Sanibel allocation.
4. Environmental officials at the Lee County government have confirmed to me that a 1500 foot buffer is desired around all eagles nests, not 1 mile. Under some conditions a 750 foot buffer will be allowed.
5. I am aware of property on Pine Island which would allow for city grade coverage of Sanibel, is not short-spaced, is for sale and is located more than 1 mile from any eagles nest known to the people in the Lee County government with responsibility for keeping track of eagles nest locations and activity.

The above statement is true and correct to the best of my personal knowledge and belief.

  
Jerry Bellairs

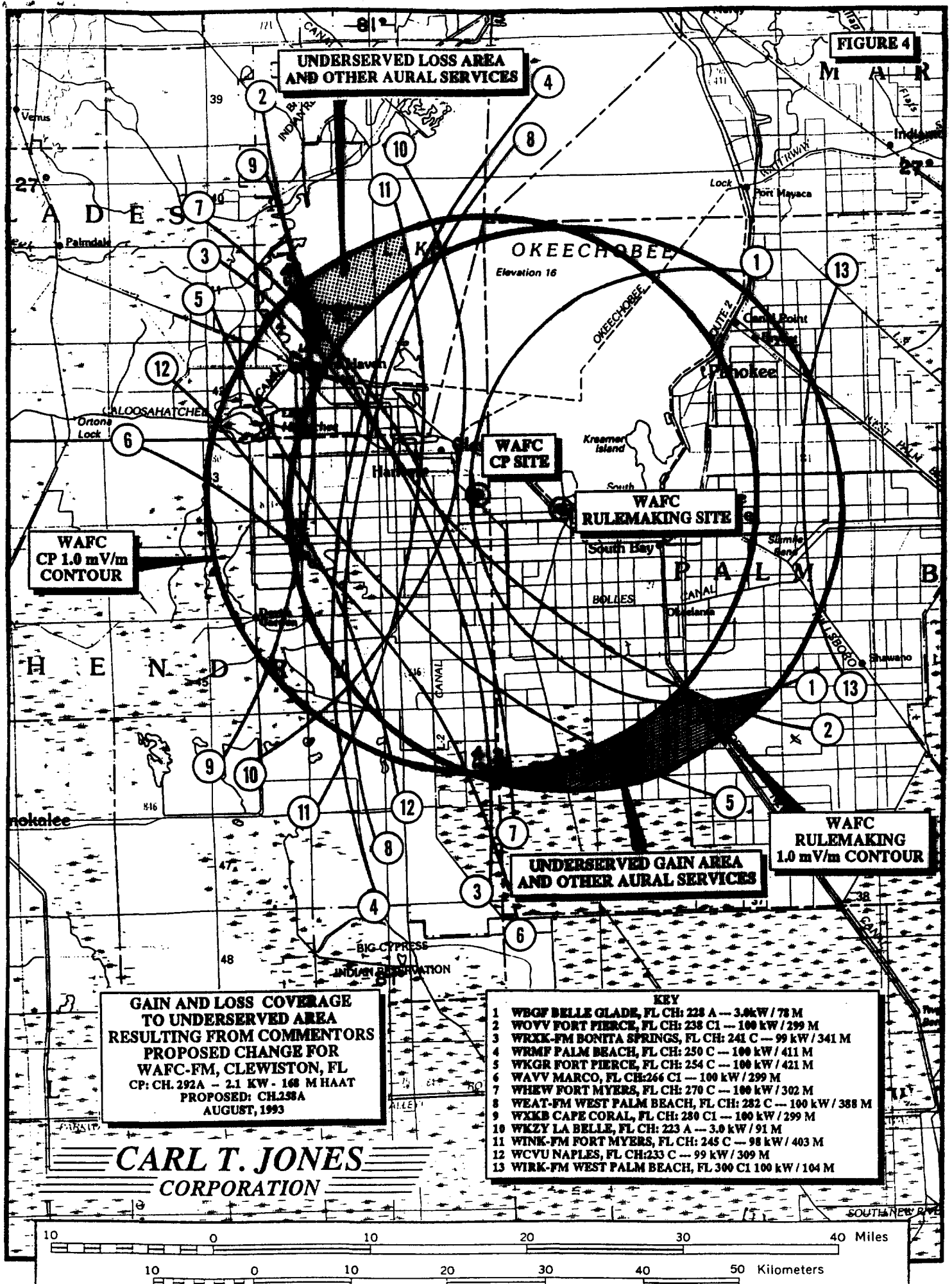
12995 S. Cleveland Avenue  
Suite 263  
Fort Myers, Florida 33907

813-275-9980

February 4, 1994

**Supplemental Joint Comments**  
**Exhibit 4**

**FIGURE 4**



**UNDERSERVED LOSS AREA  
AND OTHER AURAL SERVICES**

**OKEECHOBEE**  
Elevation 16

**WAFC  
CP 1.0 mV/m  
CONTOUR**

**WAFC  
CP SITE**

**WAFC  
RULEMAKING SITE**

**UNDERSERVED GAIN AREA  
AND OTHER AURAL SERVICES**

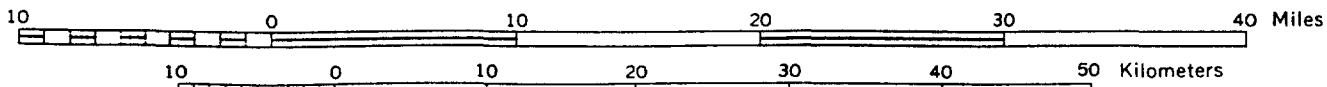
**WAFC  
RULEMAKING  
1.0 mV/m CONTOUR**

**GAIN AND LOSS COVERAGE  
TO UNDERSERVED AREA  
RESULTING FROM COMMENTORS  
PROPOSED CHANGE FOR  
WAFC-FM, CLEWISTON, FL  
CP: CH. 292A - 2.1 KW - 168 M HAAT  
PROPOSED: CH.238A  
AUGUST, 1993**

**CARL T. JONES  
CORPORATION**

**KEY**

- 1 WBGF BELLE GLADE, FL CH: 228 A -- 3.0kW / 78 M
- 2 WOYV FORT PIERCE, FL CH: 238 C1 -- 100 kW / 299 M
- 3 WRXK-FM BONITA SPRINGS, FL CH: 241 C -- 99 kW / 341 M
- 4 WRMF PALM BEACH, FL CH: 250 C -- 100 kW / 411 M
- 5 WKGR FORT PIERCE, FL CH: 254 C -- 100 kW / 421 M
- 6 WAVV MARCO, FL CH:266 C1 -- 100 kW / 299 M
- 7 WHFW FORT MYERS, FL CH: 270 C -- 100 kW / 302 M
- 8 WEAT-FM WEST PALM BEACH, FL CH: 282 C -- 100 kW / 388 M
- 9 WXXB CAPE CORAL, FL CH: 280 C1 -- 100 kW / 299 M
- 10 WKZY LA BELLE, FL CH: 223 A -- 3.0 kW / 91 M
- 11 WINK-FM FORT MYERS, FL CH: 245 C -- 98 kW / 403 M
- 12 WCVU NAPLES, FL CH:233 C -- 99 kW / 309 M
- 13 WIRK-FM WEST PALM BEACH, FL 300 C1 100 kW / 104 M



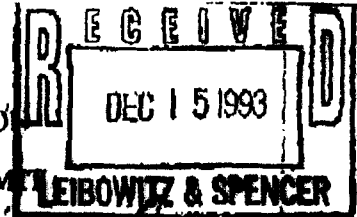


**Supplemental Joint Comments**  
**Exhibit 5**

United States of America

FEDERAL COMMUNICATIONS COMMISSION

FM BROADCAST STATION CONSTRUCTION PERMIT



Official Mailing Address:

OKEECHOBEE BROADCASTERS, INC.  
PO BOX 1247  
OKEECHOBEE, FL 33472

Authorizing Official:

*Dale E. Bickel*  
Dale E. Bickel  
Supervisory Engineer, FM Branch  
Audio Services Division  
Mass Media Bureau

Grant Date: 8 DEC 1993

Call sign: WOKC-FM

This permit expires 3:00 am.  
local time: July 08, 1994

Permit File No.: BHPH-93080911

This permit modifies Permit No.: 9205271H

Subject to the provisions of the Communications Act of 1934, as amended, subsequent acts and treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions set forth in this permit, the permittee is hereby authorized to construct the radio transmitting apparatus herein described. Installation and adjustment of equipment not specifically set forth herein shall be in accordance with representations contained in the permittee's application for construction permit except for such modifications as are presently permitted, without application, by the Commission's Rules.

This permit shall be automatically forfeited if the station is not ready for operation within the time specified (date of expiration) or within such further time as the Commission may allow, unless completion of the station is prevented by causes not under the control of the permittee. See Sections 73.3598, 73.3599 and 73.3534 of the Commission's Rules.

Equipment and program tests shall be conducted only pursuant to Sections 73.1610 and 73.1620 of the Commission's Rules.

Name of permittee:

OKEECHOBEE BROADCASTERS, INC.

Station Location:

FL-INDIANTOWN

Frequency (MHz): 103.1

Channel: 276

Call sign: WOKC-FM

Permit No.: BMPH-93080911

Class: C2

Hours of Operation: Unlimited

Transmitter location (address or description):

610 SE BRIDGE ROAD, HOBE SOUND, MARTIN COUNTY, FLORIDA

Transmitter: Type accepted. See Sections 73.1660, 73.1665 and 73.1670 of the Commission's Rules.

Transmitter output power: As required to achieve authorized ERP.

Antenna type: (directional or non-directional): Non-directional

Antenna coordinates: North Latitude: 27 01 51.0  
West Longitude: 80 15 11.0

	Horizontally Polarized Antenna	Vertically Polarized Antenna
Effective radiated power in the horizontal plane (kW) . . . . . :	50.0	50.0
Height of radiation center above ground (meters) . . . . . :	144.0	144.0
Height of radiation center above mean sea level (meters) . . . . . :	150.0	150.0
Height of radiation center above average terrain (meters) . . . . . :	147.0	147.0
Overall height of antenna structure above ground (including obstruction lighting, if any) . . . . . :	152.0 meters	

**Supplemental Joint Comments**  
**Exhibit 6**

80°

FIGURE 5

28°

27°

26°

80°

Commenters' Exhibit

- KEY**
- 1 WZZR-FM STUART, FL CH: 224 C2 --- 50kW / 147 M
  - 2 WGGF BELLE GRADE, FL CH: 228 A --- 3 kW / 78 M
  - 3 WGYL VERO BEACH, FL CH: 229 C2 --- 50 kW / 146 M
  - 4 WOVV FORT PIERCE, FL CH: 238 C1 --- 100 kW / 299 M
  - 5 WRMF PALM BEACH, FL CH: 250 C --- 100 kW / 411 M
  - 6 WKGR FORT PIERCE, FL CH: 254 C --- 100 kW / 421 M
  - 7 WEDR MIAMI, FL CH: 256 C1 --- 100 kW / 280 M
  - 8 WAVV VERO BEACH, FL CH: 269 A --- 3.1 kW / 142 M
  - 9 WHLG JENSEN BEACH, FL CH: 272 A --- 3.0 kW / 87 M
  - 10 WEAT-FM WEST PALM BEACH, FL CH: 282 C --- 100 kW / 388 M
  - 11 WOOL VERO BEACH, FL CH: 288 A --- 2.6 kW / 106 M
  - 12 WAXY-FM FORT LAUDERDALE, FL CH: 290 C --- 100 kW / 311 M
  - 13 WIRK-FM WEST PALM BEACH, FL CH: 300 C1 --- 100 kW / 104 M

UNDERSERVED LOSS AREA AND OTHER AURAL SERVICES

WOKC CP 1.0 mV/m CONTOUR

WOKC CP SITE

WOKC NEW CP 1.0 mV/m CONTOUR

WOKC NEW CP SITE

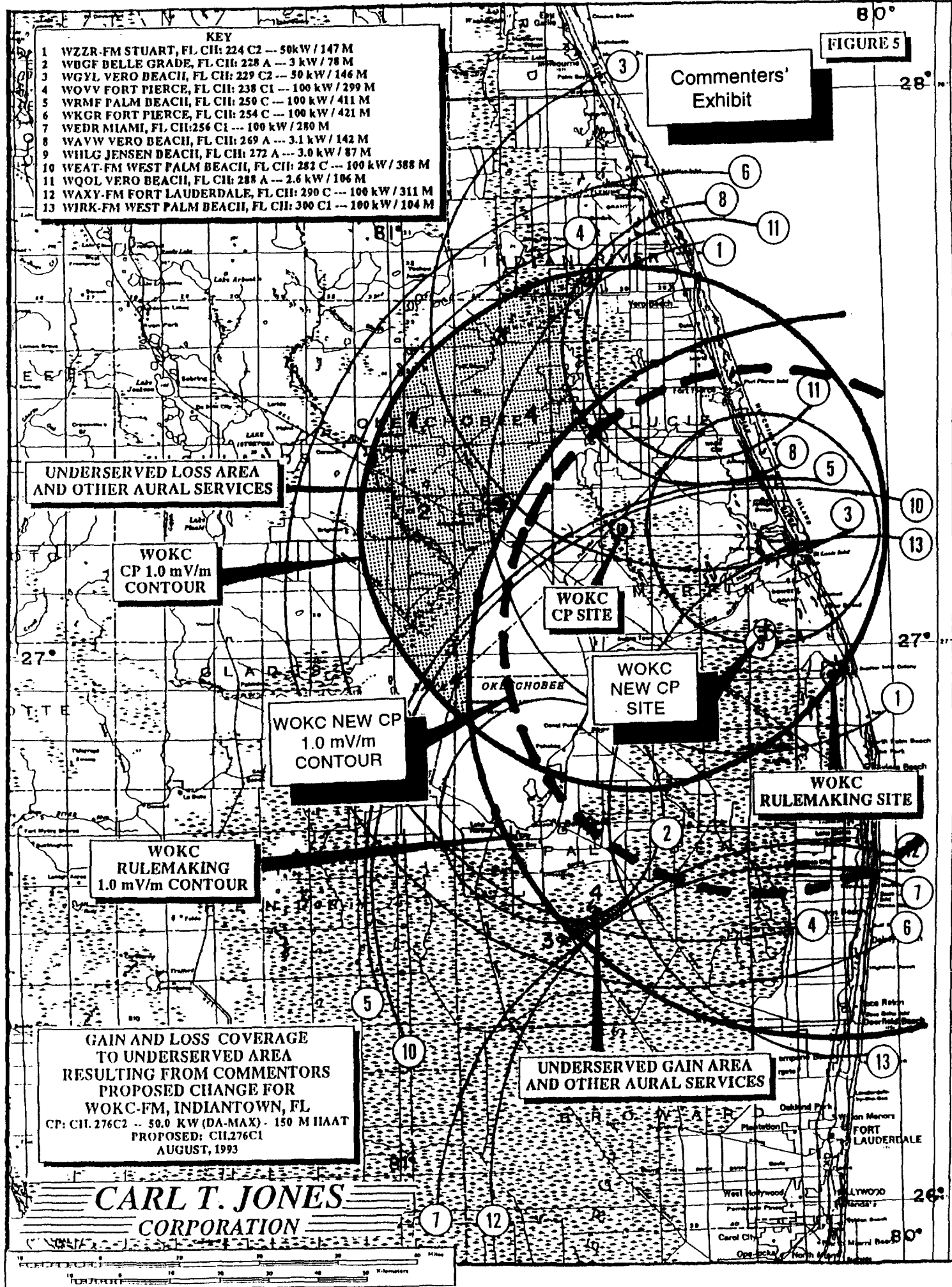
WOKC RULEMAKING SITE

WOKC RULEMAKING 1.0 mV/m CONTOUR

GAIN AND LOSS COVERAGE TO UNDERSERVED AREA RESULTING FROM COMMENTORS PROPOSED CHANGE FOR WOKC-FM, INDIANTOWN, FL  
CP: CH 276C2 -- 50.0 KW (DA-MAX) - 150 M HAAT  
PROPOSED: CH 276C1  
AUGUST, 1993

UNDERSERVED GAIN AREA AND OTHER AURAL SERVICES

CARL T. JONES CORPORATION



CERTIFICATE OF SERVICE

I, Rhonda Parrish, a secretary with the law firm of Rini & Coran, do hereby certify that I caused a copy of the foregoing "Supplemental Joint Comments" to be mailed, first-class, postage prepaid this 7th day of March, 1994 to the following:

Michael C. Ruger, Esq. \*  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 8322  
Washington, D.C. 20554

Ms. Nancy J. Walls,  
Communications Industry Analyst \*  
Allocations Branch  
Policy and Rules division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 8322  
Washington, D.C. 20554

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1825 K Street, N.W., Suite 510  
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Counsel to Richard L. Silva

John Joseph McVeigh, Esq.  
Fisher Wayland Cooper and Leader  
1255 23rd Street, N.W., Suite 800  
Washington, D.C. 20037-1125  
Counsel to Key Chain, Inc.

James M. Weitzman  
Kaye, Scholer, Fierman, Hays & Handler  
901 15th Street, N.W., Suite 1100  
Washington, D.C. 20005  
Counsel to Spanish Broadcasting  
System of Florida, Inc.

Charles Russell, General Manager  
Florida Keys Electric Coop. Association, Inc.  
P.O. Box 377  
91605 Overseas Highway  
Tavernier, Florida 33070

*Rhonda R. Parrish*

Rhonda R. Parrish

\* Via Hand-Delivery